OVERVIEW OF MISSISSIPPI WORKERS' COMPENSATION ACT

The Mississippi Workers' Compensation Act was created in the 1940's. Today the Act is contained in Sections 71-3-1 to 129 of the Mississippi Code.

The Mississippi Workers' Compensation Act Self-Insurer Guaranty Association Law is contained in Sections 71-3-151 to 181 of the Mississippi Code.

The Mississippi Drug-Free Workplace Premium Reduction Act is located at Sections 71-3-201 to 225 of the Mississippi Code.

The Mississippi Drug and Alcohol Testing of Employees Act is found at Sections 71-7-1 to 33 of the Mississippi Code.

In addition to the statutory provisions of the Act, there are General and Procedural Rules of the Mississippi Workers' Compensation Commission.

The Commission has established minimum and maximum recovery rates for indemnity as well as mileage reimbursement rates.

The Commission has adopted official forms, including Notice of Coverage; Self-Insured Employer Application (A-2); First Report of Injury or Illness (IA-1); Early Notification of Severe Injury (R-1); Employer's Notice of Controversion (B-52); Petition to Controvert (B-5, 11); Answer (B-5, 22); Notice of First Payment, Supplemental Agreement, and Suspension of Benefits (B-18); Medical Records Affidavit; Subpoena; Subpoena Duces Tecum; Subpoena for Taking Deposition; Order on Motion Prehearing Statement; Application for Lump Sum Payment (B-19); and Notice of Final Payment (B-31).

The Act provides a no-fault procedure designed to provide employees who sustain work related injury or illness with guaranteed medical and indemnity benefits. The Act insulates Employers from liability lawsuits for work injuries and supplants the common

law of negligence and torts. The Act is the employees exclusive remedy for work related injuries or illness within very limited exceptions such as bad faith or intentional torts.

The Act mandates that every employer having in service five (5) or more workers or operatives regularly in the same business or in or about the same establishment under any contract of hire, expressed or implied, as well as any state agency, state institution, state department, or subdivision thereof must secure workers' compensation insurance or qualify as a self-insured employer.

Lost time injury or illness which disables an employee for more than five (5) days requires payment of compensation indemnity. If the disability causes lost time of fourteen (14) days or more, indemnity shall be owed beginning with the date of disability. Medical benefits are owed for work related injury or illness regardless of lost time from work.

Compensation indemnity is computed based upon claimant's average weekly wage. The compensation rate is calculated based upon two-thirds (2/3) of claimant's average weekly wage subject to the Commission's established minimum and maximum rates. For example, the Commission established minimum and maximum indemnity rates for work injury or illness sustained during 2018 at $25.00 minimum and $487.04 maximum; 2019 at $25.00/$494.48; 2020 at $25/$505.43; and 2021 at $25/$523.16. The Act limits the maximum weeks available for lost time due to work injury or illness to four hundred-fifty (450) weeks.

The compensation indemnity rate applicable at the time of work injury or illness remains the payable rate throughout the entire period of disability without adjustment.

The Act provides that the employee is entitled to such reasonable, necessary, authorized, accident-related medical services and supplies as the process of recovery requires. The Act is supplemented by the Mississippi Fee Schedule which dictates the

coding and billing of accident-related medical expenses. Except in the case of emergency medical services, pre-certification of medical services and supplies is required in order to be authorized.

The injured or ill employee is entitled to a free choice of physician; however, the employee may elect to consent to medical services by a physician selected by the Employer/Carrier. A treating physician may make referrals to other physicians; nonetheless, all medical services and supplies must be pre-certified by Employer/Carrier in order for Employer/Carrier to be liable for medical expenses.

Incidentally, there is the legal process of Motion to Compel Medical Services and Supplies which allows an injured employee to seek administrative relief in the event Employer/Carrier unreasonably refuses to authorize reasonable and necessary medical care.

A dispute between the parties over the injured employee's medical benefits may well lead to litigation of the claim. An Employer/Carrier may initiate litigation by filing a Notice of Controversion (B-52). A claimant may initiate litigation by filing a Petition to Controvert (B-5, 11).

If a claimant files a Petition to Controvert with the Commission, the Employer/Carrier is allowed twenty-three (23) days in which to file an Answer. Once the issues are joined, the parties are allowed time to engage in discovery; however, a party may seek an emergency hearing before discovery is completed if circumstances warrant.

When the Employer/Carrier answers the claimant's Petition to Controvert, the Employer admits or denies the claimant's allegations contained in the Petition to Controvert. The Employer/Carrier is expected to raise any affirmative defenses such as intoxication or horseplay.

The Employer/Carrier is entitled to a physician of choice to examine and evaluate the claimant. Typically, the physician selected by the Employer/Carrier reviews claimant's medical records and radiographic studies and examines the claimant before issuing a medical report.

If the claimant's treating physician(s) and the Employer/Carrier's physician(s) reach different conclusions regarding claimant's work injury or illness, the parties may present the dispute to the Commission for adjudication. Often the Commission, through the Administrative Judge, orders an Independent Medical Evaluation by a physician selected by the Judge. The Employer/Carrier is required to pay the costs associated with the Independent Medical Evaluation.

There is no maximum cap on workers' compensation medical benefits. In some extreme instances, the medical expenses run in the millions of dollars.

When a claim is controverted, an Administrative Judge is assigned to the controverted claim. A Judge manages and maintains the claim throughout the period of litigation. The Judge establishes deadlines for discovery and hearing on the merits. The Judge hears and decides Motions filed by the parties. The Judge is free to require periodic status reports from the parties' attorneys.

Typically, claims begin with an injury or illness which is reported by the Employer/Carrier to the Commission. Many work injuries and illnesses remain non-controverted. Many injuries and illness resolve without permanent damage to the employee. Even if the employee sustains significant injury, the claim may be resolved with settlement of the claim without Controversion of the claim. The Commission routinely conducts hearings to consider the adequacy and appropriateness of settlement in non-controverted claims.

When the claim is controverted, litigation ensues. The claim may involve Motions and interim rulings. The claim may proceed to hearing on the merits with the possibility of subsequent appeals. A controverted claim may settle.

If the controverted claim proceeds to hearing on the merits and the claimant is successful in securing an Order for additional indemnity benefits, the claimant may seek an Order for Lump Sum 13(j) from the Commission. The Commission statistician computes the present value of future indemnity where a 13(j) Order for Lump Sum is entered by the Commission.

Often the parties terminate litigation with an Agreed Settlement 9(i). The parties negotiate, sometimes with the help of a mediator, and reach a settlement agreement which is reduced to writing. The parties execute 9(i) Settlement Agreement and submit the settlement proposal to the Commission for approval. The Commission considers the adequacy and appropriateness of the 9(i) Application. If the Commission decides the 9(i) Application should be granted, the Commission enters an Order approving the 9(i) settlement agreement.

Litigation is probably if (1) Employer/Carrier doubts fact of injury or illness; (2) employee fails to provide notice of injury within thirty (30) days from injury; (3) a Petition to Controvert is not timely filed; (4) Employer/Carrier questions the cause of the injury or illness; (5) Employer/Carrier terminate benefits without just cause; (6) Employer/Carrier deny employee choice of physician or decline to authorize medical services and supplies; and (7) the parties discuss settlement but the employee is dissatisfied with the Employer/Carrier's settlement offer.

Once litigation begins, the Employer/Carrier thoroughly investigate the employee's background, including work history, medical history, criminal history, legal history, and educational history. Employer/Carrier investigate employees' activities via

surveillance and social media. Employer/Carrier's attorney deposes the employee and requires the employee to undergo a medical evaluation by a physician selected by the Employer/Carrier. Typically, the Employer/Carrier's selected physician is provided with the employee's medical records and surveillance videos.

Prior to hearing on the merits, the Employer/Carrier, as well as the employee may hire vocational rehabilitation experts to evaluate the employee's residual wage-earning capacity.

From the Claimant's perspective, the absence from the labor market creates a barrier to return to substantial gainful employment. Deconditioning occurs. Routines are broken. Job searches are often difficult because Claimant has been unemployed for an extraordinary period.

The Employer/Carrier can establish residual wage earning capacity through vocational rehabilitation opinions. The vocational rehabilitation evidence of Employer/Carrier's specialist typically includes a labor market survey identifying suitable jobs in the Claimant's general labor markets. Approval of suitable alternate jobs by one or more of the physicians involved in the claim serves to strengthen the vocational rehabilitation specialist's opinions.

The Claimant can offer rebuttal evidence against the Employer/Carrier's vocational rehabilitation expert. Rebuttal evidence typically involves (1) proof that the Employer refuses to allow the Claimant to return to work with it; (2) diligent, regular, thorough job search by the Claimant; and (3) Claimant's vocational rehabilitation specialist.

The Commission requires the parties to file Prehearing Statements and attach thereto supporting claim documentation before scheduling a hearing on the merits. The

Commission encourages the parties to engage in non-binding mediation prior to hearing on the merits.

In October and November 2005, the Commission issued two (2) formal Memoranda to the Mississippi Bar Association addressing the Commission's position regarding mediation. These Memoranda are found in the Mississippi Workers' Compensation Facts 2013. The Commission supports voluntary mediation and encourages the Administrative Judge to promote the use of mediation The Commission suggests that the cost of mediation shall not reduce benefits to which the injured or ill employee would otherwise be entitled.

Incidentally, the Workers' Compensation Section of the Mississippi Bar Association created a Kids' Chance Mediation Program, which is a charitable arrangement whereby twenty-five percent (25 %) of the mediation fees is remitted to the Kids' Chance Scholarship Fund. Those funds are distributed to children of workers who are disabled or die due to work injuries or illnesses.

The Administrative Judge conducts the hearing on the merits. Exhibits and Stipulations are introduced into evidence. Witnesses testify under oath. Often the Judge requests post-trial briefs from the parties. The Judge then issues a written Decision and Order adjudicating the claim.

Apportionment is allowed where a pre-existing handicap, disease, or lesion is proven by legitimate medical findings to be a material contributing factor in the results following injury and attainment of maximum medical recovery. The determination of maximum medical recovery and the percentage of apportionment is to be determined by the Administrative Judge/Commission. Once determination has been made by the Administrative Judge/Commission, weekly indemnity benefits and maximum recovery

shall be reduced by that proportion which the pre-existing condition contributed to the results following injury and attainment of maximum medical recovery.

If any overpayment of indemnity has occurred prior to Administrative determination of apportionment, the Employer/Carrier receives a credit for excessive payments. However, no actual repayment of such excess shall be made to the Employer/Carrier.

If either party is dissatisfied with the Judge's ruling, that party may request a review by the Full Commission. The opposing party may file a Cross-Petition for review. The parties brief the case to the Full Commission. Often oral argument is presented to the three (3) Commissioners.

The Commission considers the case *de novo* and in limited situations allows introduction of new evidence. The Commission issues a decision which typically affirms the Judge's decision or reverses the Judge's decision or remands the case to the Judge for further development.

If either party disagrees with the Commissioners decision, the party may appeal to the Mississippi Supreme Court. The other party may cross-appeal. The Mississippi Supreme Court directs the appeal to the Mississippi Court of Appeals.

The Mississippi Court of Appeals reviews the record in the case and issues its decision. A party dissatisfied with the Court of Appeals' decision may request review by the Mississippi Supreme Court and the other party may make a cross-request. Typically, the Mississippi Supreme Court rejects requests for review unless the case presents novel issues.

There are legal relationships which exist between the Mississippi Workers' Compensation Act and other legal entities and procedures.

If the work injury or illness is caused by a third-party, then the employee may pursue a workers' compensation claim as well as a third-party lawsuit with certain exceptions. For a detailed explanation of exceptions to the ability to pursue third-party lawsuits please read *Doubleday v. Boyd Construction Company*, 418 So. 2d 823(1982). The Employer/Carrier also have a right to pursue a third-party claim. If the injured employee is successful in the third-party case, the workers' compensation Employer/Carrier have subrogation rights to be reimbursed from the third-party recovery. In order for the Employer/Carrier to protect its subrogation rights, the Employer/Carrier intervenes in the third-party case. The Employer/Carrier's subrogation right is subject to the Claimant's attorney fee lien.

Another legal relationship exists between Mississippi Workers' Compensation and Social Security Disability/Medicare. If the injured employee files a claim for Social Security Disability/Medicare as well as Mississippi Workers' Compensation benefits, the Social Security Administration has an interest in the workers' compensation claim. Generally, the Social Security Administration may reduce its monthly disability payments to the injured employee depending upon a computation made by the Social Security Administration. The Social Security Administration has a lien for conditional medical payments made by Medicare if the Employer/Carrier should have made medical payments but did not do so. The Social Security Administration's interests must be protected. Typically, the Employer/Carrier funds a Medicare Set Aside account.

There are also other legal relationships which exist between the Mississippi Worker's Compensation Act and the Mississippi Employment Security Commission, the Mississippi Department of Vocational Rehabilitation, the Americans with Disabilities Act, and other legal entities and Acts.